

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GARCIA, JOSE,

Plaintiff(s),

**08-CIV-1270**

-against-

**ANSWER**

CITY OF MOUNT VERNON, CITY OF  
MOUNT VERNON POLICE DEPARTMENT  
AND INDIVIDUALS OF THE CITY OF MOUNT  
VERNON POLICE DEPARTMENT,

**(SCR)**

Defendants.  
-----X

Defendants, CITY OF MOUNT VERNON, CITY OF MOUNT VERNON POLICE  
DEPARTMENT AND INDIVIDUALS OF THE CITY OF MOUNT VERNON POLICE  
DEPARTMENT, by the Office of the Corporation Counsel, HELEN M. BLACKWOOD  
answering the Complaint of Plaintiff alleges, upon information and belief:

**AS AND FOR AN ANSWER TO THE PARTIES**

1. Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraph number "1" of the Complaint.
2. Admits each and every allegation contained in paragraph number "2" of  
the Complaint.

**AS AND FOR AN ANSWER TO FACTS PERTAINING TO THE PLAINTIFF**

3. Denies knowledge or information sufficient to form a belief as to the truth  
of each and every allegation contained in paragraphs numbered "3", "4", "5", "6", "7",  
"8", "10", "26", "27", "28", "29", "30", "33", "34" and "35" of the Complaint.
4. Denies each and every allegation contained in paragraph number "9", "10"  
"11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "31"

and "32" of the Complaint except admits that two Mount Vernon police officers chased the Plaintiff when Plaintiff ran after they identified themselves as police officers, that while in pursuit of the Plaintiff he fell, that the Chinese victim identified the Plaintiff to the police, that the Plaintiff was taken to the police station after this identification pursuant to law and that the Plaintiff was transferred to Westchester County Jail at Valhalla and charges against the Plaintiff were dismissed.

**AS AND FOR AN ANSWER TO THE FACTS PERTAINING TO DEFENDANTS**

5. Denies the truth of each and every allegation contained in paragraphs numbered "36", "37", "38", "39" and "40" and refers all questions of law to this Honorable Court.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION FOR NEGLIGENCE**

6. Answering paragraph number "41" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "5" with the same force and effect as if fully set forth at length herein.

7. Denies the truth of each and every allegation contained in paragraphs numbered "42", "43", "44" and "45" of the Complaint and refers all questions of law to this Honorable Court.

8. Denies the truth of each and every allegation contained in paragraph number "46" of the Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION FOR  
ASSAULT**

9. Answering paragraph number "47" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "8" with the same force and effect as if fully set forth at length herein.

10. Denies the truth of each and every allegation contained in paragraphs numbered "48", "49", "50" and "51" of the Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION FOR  
BATTERY**

11. Answering paragraphs number "52" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "10" with the same force and effect as if fully set forth at length herein.

12. Denies the truth of each and every allegation contained in paragraphs numbered "53", "54" and "55" of the Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION FOR  
FALSE ARREST**

13. Answering paragraph number "56" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs numbered "1" through "12" with the same force and effect as if fully set forth at length herein.

14. Denies the truth of each and every allegation contained in paragraphs numbered "57" and "58" of the Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION FOR FALSE IMPRISONMENT**

15. Answering paragraph number "59" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "14" with the same force and effect as if fully set forth at length herein.

16. Denies the truth of each and every allegation contained in paragraphs numbered "60", "61", "62", "63" and "64" of the Complaint.

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION FOR MALICIOUS PROSECUTION**

17. Answering paragraph number "65" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "16" with the same force and effect as if fully set forth at length herein.

18. Denies the truth of each and every allegation contained in paragraphs numbered "66", "67", "68", "69", "70", "71", "72", "74", "75" and "76" of the Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph number "73" of the Complaint.

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE OF ACTION FOR VIOLATION OF PLAINTIFF'S PRIVACY AND LIBERTY INTERESTS UNDER New York STATE AND UNDER THE FOURTH AMENDMENT**

20. Answering paragraph number "77" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "19" with the same force and effect as if fully set forth at length herein.

21. Denies the truth of each and every allegation contained in paragraphs numbered "78", "79" and "80" of the Complaint.

**AS AND FOR AN ANSWER TO THE EIGHT CAUSE OF ACTION FOR  
VIOLATION OF PLAINTIFF'S DUE PROCESS AND EQUAL PROTECTION RIGHTS  
UNDER THE NEW YORK STATE CONSTITUTION AND PUBLIC POLICY AND  
UNDER THE FOURTEENTH AMENDMENT**

22. Answering paragraph number "81" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "21" with the same force and effect as if fully set forth at length herein.

23. Denies the truth of each and every allegation contained in paragraphs numbered "82", "83", "84", "85", "86", "87", "88", "89" and "90" of the Complaint.

**AS AND FOR AN ANSWER TO THE NINTH CAUSE OF ACTION FOR  
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

24. Answering paragraph number "91" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission contained in paragraphs "1" through "23" with the same force and effect as if fully set forth at length herein.

25. Denies the truth of each and every allegation contained in paragraphs numbered "92", "93", "94" and "95" of the Complaint.

**AS AND FOR THE TENTH CAUSE OF ACTION FOR INTENTIONAL  
INFLICTION OF EMOTIONAL DISTRESS**

26. Answering paragraph number "96" of Plaintiff's Verified Complaint, Defendant repeats, reiterates and realleges each and every denial and admission

contained in paragraphs "1" through "25" with the same force and effect as if fully set forth at length herein.

27. Denies the truth of each and every allegation contained in paragraphs numbered "97", "98", "99", "100", "101" and "102" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

If the plaintiff sustained damages as alleged in the complaint, which is expressly denied by these answering defendants, then such damages were caused in whole or in part by the culpable conduct of the plaintiff. The amount of damages otherwise recoverable, if any, shall therefore be diminished in the proportion that said culpable conduct attributable to plaintiff bears to the culpable conduct that caused such injuries.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

If the plaintiff sustained damages, as alleged in the complaint, other than by reason of his own culpable conduct and comparative negligence, which is expressly denied by defendant, then such injuries and damages were caused in whole or in part by the culpable conduct of some third person or persons over whom the defendants exercised no control.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover punitive damages against any of the individual police officers since their conduct did not rise to the level of morally culpable conduct that would support such a claim.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Defendants acted in good faith and without the intent to violate plaintiff's civil rights.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Any and all officers named in this suit are protected from suit by the doctrine of qualified immunity.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Any and all officers named in this suit, and the City of Mount Vernon are protected from suit by the doctrine of absolute immunity.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's constitutional and statutory rights were not violated by the defendants.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

The City of Mount Vernon cannot be held liable based on respondent superior for the alleged violations of plaintiff's civil rights.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against the answering defendants are frivolous.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

The actions of the defendants were justified under the circumstances.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

The Defendants had probable cause to arrest the Plaintiff as the putative victim identified the Plaintiff as the person who committed a crime against him.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

The Defendants had arguable probable cause to arrest the Plaintiff as the putative victim identified the Plaintiff as the person who committed a crime against him, thus they are entitled to qualified immunity.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

The Defendants had probable cause to request the initiation of prosecution of the Plaintiff.

The Defendants opinion that they had probable cause to request that the People commence action against the Plaintiff was objectively reasonable.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

The Plaintiff's arrest, handcuffing and subsequent incarceration were incident to his legal detention and does not amount to the type of punishment that violates the Fourteenth Amendment.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

Even if the Officers probable cause or reasonable cause was based on mistaken information the officers acted reasonably and in good faith relying on that information.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

Based upon a totality of the circumstances, the officers had probable cause, thus the Plaintiff's confinement was privileged.



**AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE**

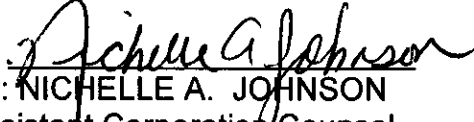
The City of Mount Vernon cannot be held liable based on respondent superior for the alleged violations of Plaintiff's civil rights.

**WHEREFORE**, Defendants, CITY OF MOUNT VERNON, CITY OF MOUNT VERNON POLICE DEPARTMENT AND INDIVIDUALS OF THE CITY OF MOUNT VERNON POLICE DEPARTMENT, demand judgment dismissing the Complaint in its entirety together with such other and further relief as this Court deems just and proper.

Dated: Mount Vernon, New York  
February 15, 2008

Yours, etc.,

Office of the Corporation Counsel  
Attorney for Defendant  
The City of Mount Vernon  
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